Approved Feb. 12, 1990 Ginger Barr
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Representative Ginger Barr at
Chairperson

1:35 ~~a.m.~~/p.m. on January 25, 1990 in room 526-S of the Capitol.

All members were present except:
Representatives Charlton
Peterson
Schauf

Committee staff present:
Mary Galligan, Kansas Department of Legislative Research
Lynne Holt, Kansas Department of Legislative Research
Mary Torrence, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:
Chris Hansen, Associate Director, Children's Rights Project of the American Civil Liberties Union (ACLU), New York City, New York
Michael George, Attorney, Social and Rehabilitative Services (SRS)

Chris Hansen gave a historic perspective of this type of litigation. It began in the late 1960s with suits against government facilities which were responsible for people's lives such as prisons, mental health and residential (e.g. retarded persons) sites. Two differences between the aforementioned and foster care are that the individuals are usually blameless children and they are not confined to one site. Mr. Hansen called the foster care system a closed system overlaid with confidentiality due to the structure of juvenile courts and the case records which are closed to the press and public. Most of the ACLU's cases are based on P.L. 96-272 and the Constitution and are filed in federal court. He stated extensive investigation is done to learn as much as possible about the system. An attempt is made to make alliances with a cross section of people interested in the child welfare system (judges, CASAs, children, foster parents, etc). The ACLU is always allied with local counsel. The procedure is:

a. the case is filed;
b. determination if the case is proper (defendants file a motion to dismiss)
c. appeal
d. systematic gathering of evidence - anecdotal not statistical

Mr. Hansen claimed there is usually very little statistical data available e.g. how many children in the system, types of case plans used, the frequency of case worker visits, the number of children with a plan of adoption, etc.

Case readings are done to gather evidence. The court is requesting, through the process of legal discovery, to give permission to obtain from the state a statistically significant random sample of children's records of confidentiality preserved. Those records are used to design questions (under the supervision of a child welfare and social science research experts) which, when answered, would provide a statistical profile of action.

Mr. Hansen stated that in all cases but one the state has offered to use the findings to resolve inadequacies within its system. Most of the cases are settled with consent decrees. He stated that the biggest problem comes after the consent decree in assuring compliance with the decree.

Mr. Hansen stated that often the problem is one of administration and management rather than money. He offered to work with the legislature in bringing the desired changes. Attachment No. 1 is Mr. Hansen's written statement.

Committee discussion:

1. The national ACLU becomes involved at the request of the state office, usually due to the lack of financial and/or staff resources to prepare a case. In this case, the local guardian ad litem (GAL) requested the assistance. The local judge granted permission for the ACLU to enter the case.
2. It was clarified that Mr. Hansen's appearance before the committee was by request of a member partially in view of the suit against the state regarding prisons.

3. The language in P.L. 96-272 is general in many places. The consent decrees are aimed at generalities e.g. definition of "proper care". Passage of a compliance audit of P.L. 96-272 should be viewed in consideration of the generalities within that law.
4. The state is measured against its own policies and procedures. These lawsuits do not seek damages on behalf of individual children or against individual social workers but rather the administration.
5. The decision making process is primarily for severance of parental rights. Definite time periods are often difficult but there should be guidelines. P.L. 96-272 implies 18 months if the parent has received professional help.
6. The following occurs with a consent decree:
   a. a petition or complaint is filed;
   b. a judgment or order is entered. In lengthy cases, it ends when the court declares all items in the consent decree are implemented.
7. Regarding the lawsuits for damages in Mr. Hansen's testimony - they are usually sought by individual lawyers and in few cases by the ACLU.
8. Federal law provides that the state will pay the legal costs to anyone successfully bringing this type lawsuit.
9. Enforcement penalties are usually fines or imprisonment. Fines are usually paid from the Children's Care Fund which is not in the best interest of the children.

   Usually a category is determined then the solution is self-evident. For example, if there is incompetence, then a management expert is hired through court order. Intransigence results in embarrassment to the state and could lead to contempt. The ultimate would be receivership in which the state's authority is rescinded and a court appointed expert would be in charge of administration.
10. Mr. Hansen could give no estimate of cost to the state as it is dependent on the length and involvement of the proceedings. At the end of the case, if the ACLU prevails, it would be entitled to reasonable attorney fees and expenses. Deposition and case reading costs would be in excess of $100.00
11. Average length of time from filing of the petition to termination is one to three years. From the time of the court order to closure, up to 10 years is not unusual. In terms of exposure, all ACLU's post-judgment time is a state cost.
12. It is possible to hire an expert, do a joint case and dispense with the lawsuit.
13. There are no reliable statistics regarding national state by state ranking. A regional philosophy in gauging the state's standing is used. The goal is to provide minimum, adequate foster care.

Michael George expressed confidence that the discovery process will reveal that Kansas is doing an adequate job in foster care, Attachment No. 2. He questioned the propriety of a lawsuit and whether the legislation was not the appropriate arena of discussion. He expressed frustration that SRS wasn't given the opportunity to discuss the allegations before the suit was filed.

Committee discussion:

1. Mr. George could not comment on SRS' refusal to spend an allocation made last year to study the foster care system.
2. A recent case in Wellington was discussed. At the district court level, all parties had been dismissed except an individual social worker. The judgment of that particular social worker was found in error. Mr. George contended it was not indicative the entire system was bad.
3. Standards are defined at the federal and state level as well as by SRS' own policies.
4. It is not the opinion of SRS that additional outside legal counsel is necessary in this case.
5. There will be some overlap between state and federal law due to the involvement of federal funds received by SRS.

6. Mr. George stated SRS is maintaining a class action suit regarding foster care is inappropriate as each child entered the system under individual circumstances.
7. This suit was filed under a 1983 civil rights lawsuit which is basically a case in which damages were sought. The plaintiffs are maintaining this is not a mandamus action.
8. If the state prevails, a request may be made for attorney fees.

The meeting was adjourned at 3:27 p.m. The next meeting of the committee will be January 30, 1990, 1:30 p.m. in Room 526-S.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE 1-25-90

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
LINDA KENNEY	900 SW JACKSON	KDHE
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Bob Hiller	Docking S.O.B. SIGN	SRS
Rebecca Harsh	1600 Haskell Lawrence	Rep Charlton's office
Michael Hoy	3120 S.W Topeka	SRS
Jack Thomas	#501	Rep
CHRIS ROSS		KDHE
Dalene Jones		Kansans for Life
Ann Roberts		SRS
Robert Sue McKenna	DSOB	SRS
Jean McBride	Topeka	observer
Melissa Ness	Topeka	KCSL
Beth Powers	Topeka	Kansas Choice Alliance
Janee Rosenthal	110 South - Capital	Reg Jayne Aylward office
Elaine Lynch	#153	Rep
Donna Buchholz	915 west 10th Topeka	ks child Abuse Prevention Council
Angie Brecheisen	Isle	intern for Ensminger
Lew Baker	Topeka	KALPCCA

TESTIMONY OF

CHRIS HANSEN
Associate Director
Children's Rights Project (ACLU)
132 West 43 Street
New York, New York 10036
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Federal & State Affairs
Attachment No. 1
January 25, 1990

My name is Chris Hansen and I am the Associate Director of the Children's Rights Project of the ACLU. The Children's Rights Project is a national project that brings lawsuits against state or county child welfare systems in order to ensure that those systems provide effective, efficient, minimally adequate services to children and families.

As the legislature may know, a suit against Kansas's SRS was filed about a year ago on behalf of all of the Children in Need of Care. The suit charges that SRS is not complying with legally mandated minimum standards of care. That suit is now pending before the Honorable Adrian Allen in District Court in Topeka. I am one of the lawyers representing the plaintiffs in that case. Judge Allen has denied the state's motion to dismiss the case. SRS is trying, so far unsuccessfully, to appeal. In the meantime, the parties are engaged in preliminary discovery and motions.

I believe it would be inappropriate for me to discuss in public any matter relating to the suit that has not been first presented to Judge Allen. Accordingly, my testimony is not primarily about the SRS suit, but about the status of similar suits around the country.

Child welfare systems are usually considered to consist of four components. The first is the child protection system which investigates allegations that a parent has abused or neglected a child. The second is preventive services, services to families in trouble that seek to preserve the families wherever possible and avoid the need to remove the children from the parents. Third is the foster care system that assumes temporary custody of children who cannot live with their parents, usually though not always as a result of abuse or neglect by the parent. The final part of the child welfare system is responsible for finding permanent adoptive homes for those children who cannot ever return to their parents. Because of the enormous power wielded by the government through the child welfare system to interfere in a family even to the point of permanently removing the children from the parents, its operation raises serious civil liberties concerns.

Unfortunately, child welfare systems are often grossly inadequate, unnecessarily interfering in families and causing serious, irreversible harm to the very children the system was set up to protect. Allegations of abuse or neglect are often not investigated promptly or completely. Children are removed from their home when services to the family would have made it possible to preserve the family. Children who are in foster care are often placed in homes of untrained and poorly supported foster parents who are supervised by poorly trained and enormously overworked social workers. As a result, children do not receive necessary services or treatment and remain in care much longer

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than is necessary. They move repeatedly from one home to another. Children who are appropriate for adoption wait years for an adoptive home. These kinds of failures can prevent children from ever having a relationship with a caring and consistent parent, one of the prerequisites to healthy adult relationships. These problems are generally not the fault of the workers or the foster parents, but of the state agency which has inadequate resources and often mismanages those that do exist.

Faced with state agencies that assumed enormous, sometimes total control for individuals and did so in ways that were unnecessary and harmful, lawyers for children looked for methods that could be used to force reform. We developed legal theories based on constitutional rights, based on general due process principles and the right not to be harmed while in state custody (see Mushlin, "Unsafe Havens: The Case for Constitutional Protection of Foster Children From Abuse and Neglect," 23 Harv. C.R.-C.L. L. Rev. 199 (Winter, 1988), and based on the federal child welfare funding statute, P.L. 96-272, 42 U.S.C. §620 et. seq., 670 et. seq.. Applying litigation methods and theories developed in the areas of prison litigation and mental health litigation to a whole new area of state control over individuals -- child welfare -- we initiated litigation on behalf of all of the children affected by the child welfare system, or part of the system, in a number of jurisdictions.

With one exception, the earliest challenges to state child welfare systems were litigated by the Children's Rights Project. Among the earliest cases were:

Joseph A. v. New Mexico, 575 F. Supp. 346 (N.M., 1983) (An Children's Rights Project case on behalf of all of the children in New Mexico's foster care system, Joseph was primarily directed at the state's failure to develop plans for the children in care and to implement those plans. The result was that children drifted year after year through the foster care system, not returning home, not being adopted, never having a permanent home. The case was settled with a Consent Decree in 1983. Since then, the Children's Rights Project has engaged in substantial enforcement activity. For a more extensive discussion of Joseph, see below.)

G.L. v. Zumwalt, 564 F. Supp. 1030 (W.D. Mo., 1983) (A Children's Rights Project case on behalf of all children in the county that includes Kansas City, this case was primarily directed at the high level of abuse and neglect by foster parents of foster children, indicating serious problems in recruiting, training, and supervising of foster parents and equally serious problems in training and supervision done by workers. The case was settled by a Consent Decree in 1983 and has been in the enforcement phase since then. A court oversight committee has been established and a methodology for measuring compliance

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agreed upon. See Mushlin, Levitt, and Anderson, "Court-Ordered Foster Family Case Reform: A Case Study," LXV Child Welfare 141 (March/April 1986))

In Re Michael and Michele P., state court, Louisville, Kentucky. (A Children's Rights Project case on behalf of all black Protestant children who have a plan of adoption in Louisville, the case alleged that the state had itself committed abuse or neglect by failing to expeditiously arrange for adoptive homes for children whose plan was adoption. The case was settled by a Consent Decree in 1981 and has been in the enforcement phase since. For a more extensive discussion of In re P., see below.)

Wilder v. Bernstein, 645 F. Supp. 1292 (S.D.N.Y., 1986) aff'd 848 F.2d 1338 (2nd Cir., 1988) (A Children's Rights Project case on behalf of all black Protestant children in foster care in New York City and taxpayers challenging racial and religious discrimination in the placement of children into publicly funded, voluntary child care agencies, this case was settled by a Consent Decree in 1986 and is in the enforcement phase.)

Lynch v. Dukakis, 550 F. Supp. 325 (Mass., 1982) aff'd 719 F.2d 504 (1st Cir, 1983) (This is a case on behalf of all of the children in Massachusetts's foster care system challenging a range of problems. A court order was obtained in 1983 setting limits on the size of caseloads by foster care caseworkers.)

For a full discussion of early child welfare litigation, see Lowry, "Derring-Do in the 1980's: Child Welfare Impact Litigation After the Warren Years," XX Family Law Quarterly 255, (Summer, 1986)

After this initial wave of litigation established the viability of the legal theories and gave some hope for genuine reform of child welfare systems, the pace of litigation accelerated. A number of new cases were filed by the Children's Rights Project and by others. The new cases fell into two major categories: class actions seeking injunctive relief to reform the whole child welfare system or parts of it and damages cases for harms done to individual families by the system. Among the newer cases in both categories are:

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Martin A. v. Gross and Cosentino v. Perales, 138 Misc. 2d 212 (Sup.Ct. N.Y. Co., N.Y., 1987); Grant v. Cuomo, 130 AD 2d 154 (App. Div., 1st. Dept., N.Y., 1987) aff'd 73 N.Y. 2d 820 (1988). (These three cases all challenge the failure of New York City to comply with state and federal mandates in the areas of protective and preventive services. Martin A, a Children's Rights Project case, challenges the failure to consider and then, where

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appropriate, provide preventive services to families whose children are placed in foster care. Cosentino challenges the failure to provide housing as a preventive service and the resultant placement of children in foster care solely because the family lacks housing. Grant argued that in some circumstances, the city was required to provide preventive services. All three cases were successful in the trial court on motions for preliminary relief. Grant was unsuccessful at both levels of appeal, the courts holding that the decisions challenged involved the exercise of discretion. Martin and Cosentino have been successful on appeal and are now preparing for trial.)

Del A. v. Edwards, Civ. Act. No. 86-0801 (E.D. La., mot. to dism., March 2, 1988) aff'd 855 F.2d 1148 (5th Cir., 1988) vac. and en banc rev. gr. 862 F.2d 1107 (5th Cir., 1988) app. dism. 867 F.2d 842 (5th Cir., 1989) (This Children's Rights Project case is on behalf of all of the children in Louisiana's child welfare system. Plaintiffs survived several motions to dismiss. Defendants appealed the denial of the motion to dismiss the damages claims on qualified immunity grounds. Appeal ultimately dismissed. Trial was begun and has not been completed.)

Roe v. Staples, C-1-83-1704 (S.D. Ohio, Consent Decree entered Oct. 2, 1986) (This case challenged the conditions in the foster care system in Hamilton County, Ohio which includes Cincinnati. It was settled by a Consent Decree in 1986.)

L.J. v. Massinga, 838 F.2d 118 (4th Cir., 1988) cert. den. 57 USLW 3453 (Jan. 9, 1989); Consent Decree approved 699 F. Supp. 508 (Md., 1988) (This is a challenge to the foster care system in Baltimore. It was settled with a Consent Decree in 1988 and is in enforcement.)

B.H. v. Johnson, No. 88C5599 (N.D. Ill., filed July, 1988) (This is a case by the Illinois affiliate of the ACLU alleging deficiencies in the child welfare system in Illinois. Motions to dismiss have been largely denied and discovery has begun.)

LaShawn v. Barry, No. 89-1754 (D.C., filed June 1989) (This Children's Rights Project case is a comprehensive challenge to child welfare in the District of Columbia.)

Juan F. v. O'Neill, No. H89 859 (Conn., filed December 1989) (This Children's Rights Project case is a comprehensive challenge to child welfare in Connecticut.)

R.C. v. Hornsby, Civ. Act. No. 88-D-1170-N (M.D. Ala., filed 1988) mot. to dism. den. Apr. 19, 1989 (This is a case initially filed on behalf of an individual in Alabama by the Alabama affiliate of the ACLU with the Mental Health Law Project. Motion to dismiss was denied. Plaintiffs are now in discovery.)

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B.M. v. Magnant, No. I-P-89-1054 (S.D. Ind., filed September 29, 1989) (This is a comprehensive challenge to child welfare services in Marion Co., Indiana.)

These cases all seek fairly wide-spread reform of the foster care system. There have been other cases challenging one or more discrete issues within the system. For example, in Illinois, Bates v. Johnson was settled in June, 1986, with rules requiring parent/child visitation on a set schedule. Another case, In re G.S., was settled in June, 1987, with a decree establishing a whole new system for lawyers who represent children in dependency cases. In Arkansas, a court ruled that the state was failing to provide services to children placed with relatives. See also Eugene F. v. Gross, Index No. 1125/86 (Sup. Ct., N.Y. Co.). In California, Timothy J. v. Chaffee, LASC # CA 001128 alleges that social workers do not make sufficient visits to children and their families. Doe v. NYC DSS, 670 F. Supp. 1145 (S.D.N.Y., 1987) is a challenge to the city's failure to place children in foster homes upon receiving custody instead of having children sleep in offices. It was settled in 1989.

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DeShaney v. Winnebago Co., 57 USLW 4218 (Feb. 22, 1989) (In this case, the Supreme Court found that the state owed no duty to protect a child who was in the custody of his parent but who was being supervised by the child protection system even when the social worker for the system observed repeated instances of suspicious injuries and did nothing.)

Taylor v. Ledbetter, 818 F.2d 791 (11th Cir., 1987) cert. den. Ledbetter v. Taylor, 57 USLW 3588 (1989) (Successful suit for damages against state and county officials for injuries caused by foster parents while child was in state custody.)

Doe v. NYC DSS, 649 F.2d 134 (2nd Cir., 1981) cert den. 649 F.2d 134 (1982); 709 F.2d 782 (2nd Cir., 1983) (Successful suit for damages against city and private agency officials for injuries caused by foster parents while child was in state custody.)

Eugene D. v. Karman, No. C 84-1075-L-A (W.D. Ky., filed Oct. 17, 1984) (This case alleges gross medical and other neglect by foster parents of a child in state custody. Motion to dism. and for summary judgment denied. Case on appeal on qualified immunity.)

Harpole v. Ark. DHS, 820 F.2d 923 (8th Cir., 1987); Lesher v. Lavrich, 784 F.2d 193 (6th Cir., 1986); Scrivner v. Andrews, 816 F.2d 261 (6th Cir., 1987) (Unsuccessful efforts to relitigate family court proceedings by damages suits in federal court.)

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The question remains in all of these cases whether the use of litigation is successful in changing state foster care agencies. It is possible to look at the impact of child welfare litigation from two standpoints: what impact the lawsuit has had on the law and what impact the lawsuit has actually had on the lives of children. Making new law and establishing legal precedent is important because that precedent then provides guidance to other states and other systems about what is permissible and, one hopes, encourages other systems to reform before they, too, get sued. And if that guidance is not followed, legal precedent in one system provides the basis for victory in a lawsuit in the next system. The cases have established important legal precedents.

The judgments entered in lawsuits which have gone to a successful conclusion also provide important precedent concerning the power of the courts in these kinds of cases. Thus the courts have approved judgments with specific requirements covering a range of issues including the frequency and content of worker and foster parent training, worker caseload size, time periods within which case planning must be done, permissible planning options for children, time periods and steps that must be followed to ensure that children receive a permanent placement, citizen reviews of planning for individual children, and provision of medical treatment for children.

Obtaining a judgment is only the first and not the last step in bringing about real change in the lives of children affected by child welfare systems. Without vigorous and constant monitoring these judgments are no more likely to be enforced than the laws upon which they are based. However, with persistence, these judgments can produce reforms. The Louisville and New Mexico cases provide good examples.

Louisville, Ky.; In re Michele and Michael P.

In Louisville, a neglect petition was brought against the local department of social services for itself neglecting children who had been placed in the department's custody and for whom adoption had been determined to be appropriate. All states have laws allowing the state social services agency to sue a parent for causing harm -- either physical or emotional -- to a child. In Kentucky, the Children's Rights Project argued that the state was causing the same kind of harm to these children by failing to make efforts to effectuate its own plan for them, and was itself a neglectful custodian.

There is unanimous agreement among social work professionals that foster care should be temporary, and children either returned home or placed in a new permanent home through adoption whenever possible. There is also unanimous agreement that the older children are the harder it is to find adoptive homes for

them. In all too many instances children are not adopted simply because the paperwork is not done and they don't become available for adoption until they are either too damaged by their experiences in foster care -- during which most children are shifted among a number of different homes -- or too old to be acceptable to families or individuals looking for younger children.

The Children's Rights Project alleged that Michele and Michael were only illustrative of a broader problem. The reason Michele and Michael had not been adopted was not that their worker was incompetent, but rather that the system itself was inadequate. The court both sustained the neglect petition against the department and allowed the case to proceed as a class action on behalf of all Louisville children for whom adoption was the plan.

On the even of trial, the state agreed to a court-ordered judgment that was intended to reform the adoption process in Louisville. The court order listed each of the steps that must be taken to find an adoptive home for a child and a specific time period within which that step should be accomplished. For example, when a child first enters foster care in Louisville, the first step is to have a planning conference to determine whether that child will return home or will be appropriate for adoption. The consent decree provides that that conference must be held within seven days of the date the child enters care. Further along in the process the decree provides time tables within which the social worker must prepare a summary of the case to be sent to the lawyers who must then prepare the necessary court documents in order to make the child legally available for adoption and within which the child must be referred to the unit which finds adoptive homes. The decree also requires periodic reports by the state concerning compliance.

The court approved the consent decree in September, 1981. For the next few years, Kentucky made few efforts to comply with the decree. In addition, Kentucky announced that it had unilaterally decided to disobey the decree and would no longer produce the required compliance reports. The Children's Rights Project moved for contempt based on the state's decision not to provide further reports and based on the lack of compliance reflected in the reports that had been submitted. Compliance statistics ranged from 10% to 55%. A contempt finding was granted and sustained on appeal.

Still, little action was taken to comply. In 1987, the Children's Rights Project moved for contempt for a second time, asserting that virtually no progress had been made in achieving compliance with the Decree. This time, the Children's Rights Project analyzed data for the period January 1, 1986 through July 1, 1987, which showed compliance figures for each step ranging from 17% to 72%, with half of the steps under 50% compliance.

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Even though the state disputed these figures, its own analysis also showed substantial noncompliance. Based on the evidence, the court announced its intention to hold the state in contempt for a second time and instructed the parties to meet to agree upon an order that might have some effect in improving compliance.

The parties were able to agree upon a modification of the decree that went into effect in 1988 and that incorporated a mechanism for collecting and reporting compliance data that both parties could agree was accurate. This was an important step designed to avoid future arguments about whether there was compliance or not. Without those arguments, the parties could concentrate on solutions to non-compliance.

The modification also provided for the hiring of a part-time, independent person to audit the state data to make sure it was accurate. At the state's request, the modification set up a mechanism whereby the state could seek to escape from the strict requirements of the decree in an individual case if they could demonstrate that compliance would be harmful to the child or if it was impossible for the state to comply. The modified decree also required the state to achieve certain specific rates of compliance over time.

The state began reporting compliance data pursuant to the new procedures in the last quarter of 1988 and has now produced information covering several quarters. The improvement has been dramatic. In the first quarter in which the modified decree applied, compliance was 100% for all categories but one and for that category, compliance was 99%. The independent reviewer determined that the data was substantially accurate. For the second quarter, the first three months of 1989, the state showed 100% compliance for all of the steps except one and for that step, compliance was 93%. No child was exempted due to individual circumstances in either quarter. Similar results have persisted since.

There are several explanations for this dramatic though belated progress. Most importantly, the state's initial agreement to the decree had been based, in part, upon the implicit assumption that the fact of reaching agreement would satisfy the Children's Rights Project. When it became clear that the Children's Rights Project insisted not merely upon an agreement, but upon implementation of that agreement, the state appeared to assume that if the problems were ignored for a long enough period, Children's Rights Project lawyers and other advocates would give up and turn their attentions elsewhere. The second contempt motion finally seemed to convince Kentucky that the only way that Children's Rights Project lawyers would stop their continued pressure and repeated contempt motions was for the

state to comply with the Decree. Kentucky then hired a full-time staff person whose job was to ensure that workers understood the requirements of the Decree and followed it. This new staff person's efforts have obviously been very successful.

The story of In Re P. demonstrates that litigation can be successful in changing the behavior of state foster care agencies. The key factors include (1) clear goals and a court order with measurable requirements; (2) extensive fact-gathering both pre- and post-judgment; and (3) persistence and flexibility.

New Mexico

The Children's Rights Project is in a somewhat different position in our New Mexico case because it is farther away from the success it has achieved in Louisville. Nevertheless it can point to measurable improvement which is directly and solely attributable to the continuing pressure supplied by the court order in that state.

Joseph and Josephine A. v. New Mexico Department of Human Services was filed in federal court in 1980 and focussed on planning for children and access to adoption..

A Consent Judgment, entered on the eve of trial, regulated the foster care system. It set maximum caseload standards, mandated regular training for workers and established minimal caseworker qualifications, established permissible permanent plans for children, set standards for the content of the plans, established steps in the planning process and time periods within which the planning had to be done, established procedures for freeing children for adoption, for adoption recruitment and adoption matching. The judgment required periodic reviews of children's status internally, by a court, and by Citizen Review Boards, which were also created by the judgment. It also mandated the establishment of a statewide computer information system and monitoring procedures, including the creation of the position of compliance monitor.

The implementation process in New Mexico has varied enormously. The department was unable to do the initial planning that would have led to a smooth implementation of the reforms required by the judgment. When confronted with claims of noncompliance in 1984 and 1985, the department admitted the noncompliance and agreed to hire a nationally recognized child welfare expert as a consultant to work with state administrators in designing procedures, management systems, and a computerized information system, as well as a uniform case record system.

Over the last several years, the department has made measurable progress. That progress has been insufficient to constitute compliance with the decree, however, and there is

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insufficient evidence that the reforms have been institutionalized to a degree that continuing court supervision is unnecessary. Therefore, when the department sought to be relieved from the obligations of the decree, the Children's Rights Project had to return to court, where a proceeding is pending. Nevertheless, both sides readily admit that the court order has resulted in dramatic change in a state foster care system that, when the lawsuit was filed, had been one of the worst in the country.

Among the specific changes:

* Sixty-four per cent of the children in foster care in New Mexico had been in state custody for 24 months or longer. The length of time in custody has dropped from four and a half to one and one-half years.
* The department instituted in 1987 an annual training program for all workers, and now provides preservice training for workers.
* The amount of funding for child welfare services has increased.
* The number of attorneys available to handle children's cases increased by 14, and all areas of the state now have attorneys to handle both neglect and termination of parental rights cases. Previously many of the areas of the state simply had no attorneys available to free children for adoption.
* The number of social workers has increased by 49 and the number of supervisors by 6.
* A caseload weighting system has been developed and refined so that mixed caseloads can be judged by consent decree standards.
* A statewide computer system is in place, which tracks most though not all consent decree requirements and provides a "tickler" system to ensure that planning events take place as required.
* The department has instituted a Quality Assurance Program, based on a design by the outside expert, to measure the quality of the casework and planning, as well as compliance with mandated timelines.
* A uniform case record system has standardized the recording of information, made that information more accessible, and is considered by case workers to save significant amounts of time.
* Citizen Review Boards have been established statewide and review many though not all children for whom review is mandated. When the legislature cut the money to operate the boards, the department was able to find the money elsewhere in its budget.
* The number of children with inappropriate or unrealistic plans has dropped significantly. In 1987, 66 children had a plan of return home but had had no contact with a parent for the previous six months. In 1988, only 36 children were in

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such a category. In 1987, 323 children had had a plan of return home for more than 18 months without that plan being accomplished. In 1988, only 68 children were in such a category. In 1987, 43 children 15 years or younger had a plan of emancipation or independent living. In 1988, 14 children had such a plan.

* Less than one-third of the children for whom adoption was appropriate had been referred for adoptive placement before the lawsuit was filed. Almost all children in that category are now referred for adoptive placement.
* Adoptive placements have almost tripled, increasing from 52 in 1983 to 137 in 1987.

New Mexico is far from providing an ideal foster care system to its children. But even the defendants concede that the consent decree in this case provides an excellent framework for operating the child welfare system, has brought money into the department that would not otherwise have been available, and has kept the department moving toward reform through several different state administrations for whom child welfare and foster care would not otherwise have been a priority.

As these cases illustrate, the path of implementation has been far from smooth. It has required persistence and, in some instances, further litigation. But the lawsuits, and the judgments that have resulted from them, have been the only consistent and long-lasting pressure for reform in child welfare systems that were seriously damaging the children caught up in them.

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Ladies and Gentlemen,

My name is Michael George, one of the attorneys of record for the Department of SRS in the class action lawsuit concerning our foster care system and the placement of children in SRS custody. Although we welcome the opportunity to talk with you about what efforts SRS is making to provide proper care and services for children placed in SRS custody, because this matter is in litigation we will not be able to discuss specifics about the case. We are here to encourage this kind of exchange because we feel this rather than the Court is the proper forum to handle this matter.

We have petitioned the Supreme Court to examine whether this type of lawsuit can be filed in Kansas as a result of the Separation of Powers Doctrine. Since SRS has no authority but to follow the law and utilize the resources provided by law, the Department's position is that the relief the ACLU is seeking should be provided by the Legislature and not the court. We feel any ruling by the court will set a terrible precedent of determining the specific conditions of an entitlement program. We do not believe this is what the Legislature or the Courts would want. If the ACLU is asking for additional resources, we would request that you at least obtain specific information from them as to why they think these changes are needed. What

additional resources are required? We feel Kansas is doing the job of taking care of the children in its custody within the resources provided the agency. SRS is within state or federal laws in the implementation of its programs, and is maximizing its budgetary capability to meet the needs of Kansans.

THANK YOU FOR YOUR ATTENTION AND CONSIDERATION. I AM AVAILABLE FOR ANSWERING ANY QUESTIONS YOU MAY WISH TO ASK.

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